

11-16-2016

State v. Mai Appellant's Brief Dckt. 44217

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44217
)	
v.)	CASSIA COUNTY NO. CR 2011-8714
)	
TRAVIS SHANE MAI,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Travis Shane Mai appeals from the district court's order revoking probation, executing his underlying sentence of seven years, with two years fixed, and retaining jurisdiction. He contends the district court abused its discretion when it revoked his probation because he could have been successful on probation, and his violations indicated only a need for more aggressive substance abuse treatment in the community.

Statement of the Facts & Course of Proceedings

In February 2012, Mr. Mai was charged by Information with felony DUI. (R., pp.42-44.) After he pled guilty, the district court entered a withheld judgment and placed Mr. Mai on probation for a period of four years, with the condition that he participate in drug court. (R., pp.66, 87, 89.) The order withholding judgment and order of probation was entered on May 10, 2012. (R., pp.88-95.) Supervision was transferred from drug court to the IDOC on November 29, 2012. (R., pp.103-04.)

Almost three years later, on November 2, 2015, the State filed a motion for bench warrant for probation violation alleging Mr. Mai violated probation by missing four probation appointments; failing to pay costs of supervision; testing positive for alcohol, methamphetamines and amphetamines; and missing urinalysis testing. (R., pp.105-08.) Mr. Mai admitted to the allegations. (R., p.115.) The district court found the violations were willful, with the exception of the failure to pay costs of supervision, and revoked Mr. Mai's probation and sentenced him to a unified term of seven years, with two years fixed. (R., p.115.) The district court suspended the sentence and placed Mr. Mai on probation for a period of 36 months. (R., p.115.) The order on probation violation and judgment of conviction was entered on November 17, 2015. (R., pp.116-17, 118-21.)

On January 21, 2016, the State filed a motion for bench warrant for probation violation alleging Mr. Mai violated probation by missing and/or arriving late to multiple probation appointments; failing to pay costs of supervision; failing to pay court fines and fees; testing positive for alcohol, methamphetamines and amphetamines; and missing urinalysis testing. (R., pp.122-27.) Mr. Mai admitted to the allegations. (4/5/16 Tr., p.5, Ls.22-25.) Following a hearing, the district court revoked Mr. Mai's probation, executed

his underlying sentence with credit for time served, and retained jurisdiction. (5/10/16 Tr., p.11, Ls.10-18; R., p.143.) The order revoking probation was entered on May 10, 2016. (R., pp.144-46.) On May 20, 2016, Mr. Mai filed a motion pursuant to Idaho Criminal Rule 35 (“Rule 35”) for a reduction of sentence, which the district court denied.¹ (R., pp.147-48, 158-61.) Mr. Mai filed a timely notice of appeal on May 20, 2016. (R., pp.149-51.)

ISSUE

Did the district court abuse its discretion when it revoked Mr. Mai’s probation and executed his underlying sentence of seven years, with two years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Mai’s Probation And Executed His Underlying Sentence Of Seven Years, With Two Years Fixed

“Once a probation violation has been established, the decision whether to revoke probation and impose a suspended sentence is within the discretion of the trial court.” *State v. Pierce*, 150 Idaho 1, 5 (2010) (citation omitted). “In determining whether to revoke probation, evidence of the defendant’s conduct before and during probation may be considered.” *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). The question is “whether probation is meeting the objective of rehabilitation while also providing adequate protection for society.” *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). Here, the district court abused its discretion when it revoked Mr. Mai’s probation and executed his underlying sentence of five years, with two years fixed, because he could

¹ Mr. Mai does not challenge the district court’s denial of his Rule 35 motion in light of *State v. Huffman*, 144 Idaho 201, 203 (2007).

have been successful on probation, and his violations indicated only a need for more aggressive substance abuse treatment in the community.

Mr. Mai was successful on probation for almost three years, but began using methamphetamine in August 2015. (Conf. Exs., p.3.) He participated in a GAIN evaluation prior to the disposition hearing, and was determined to be highly motivated for substance abuse treatment. (Conf. Exs., p.7.) He recognized he needed to “get back to being sober.” (Conf. Exs., p.3.) The GAIN evaluator recommended Mr. Mai participate in outpatient treatment with frequent drug and alcohol testing and case management assistance to help him to access community-based programs. (Conf. Exs., pp.12-13.) The district court could have followed this recommendation by placing Mr. Mai back on supervised probation.

Mr. Mai identified his strengths as being honest and hard-working and told the district court at the disposition hearing that he could go back to his prior job if returned to probation. (5/10/16 Tr., p.6, Ls.12-16.) This would have allowed Mr. Mai to obtain the community-based substance abuse treatment he so clearly needs. It is one thing to be substance free while incarcerated, and another to be substance free in the community. The district court abused its discretion when it executed Mr. Mai’s underlying sentence instead of allowing him another chance on probation, with meaningful treatment. Mr. Mai was assessed at having a moderate risk to reoffend, and there is no indication he ever posed a danger to anyone other than himself. (Conf. Exs., p.2.) Mr. Mai deserved another chance at probation, not a lengthy term of incarceration.

CONCLUSION

Mr. Mai respectfully requests that this Court vacate the district court's order revoking probation and executing his underlying sentence and remand this case to the district court with instructions to place him on probation.

DATED this 16th day of November, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of November, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TRAVIS SHANE MAI
INMATE #104084
CAPP
15505 S PLEASANT VALLEY ROAD
KUNA ID 83634

MICHAEL R CRABTREE
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas